Harbhajan Singh v Suruhanjaya Pasukan Polis, Malaysia & Anor

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S5-21-08 OF 1997
JAMES FOONG J
24 NOVEMBER 1994

Police *— Disciplinary proceedings — Dismissal — Delay in deciding to dismiss plaintiff — Plaintiff not informed on which charges he was dismissed — Whether there was injustice and unfairness in decision making process of the Commission — Whether must be informed on which of three charges he was dismissed*

The plaintiff was a police officer of the rank of Assistant Superintendant of Police. He was forwarded with a show cause letter, which contained three charges, from the first defendant ('the Commission'). The plaintiff then made a written representation to the Commission. The plaintiff subsequently received a letter informing him that he was dismissed from the police force with effect from 29 June 1996. Dissatisfied with the dismissal, the plaintiff sought reliefs on two grounds, namely: (i) the delay in deciding to dismiss the plaintiff was unfair; and (ii) though three charges were listed against the plaintiff, he was never informed on which of the three charges he stood dismissed. Counsel for the defendants, on the rebuttal of the first ground, submitted that there was no undue delay in the delivery of the decision by the Commission. As for the second ground, counsel argued that the Public Officer (Conduct and Discipline) (General Orders Chapter 'D') Regulations 1993 did not require such disclosures.

Held, dismissing the application:

(1) After examining the principal jobs that each of the Commission members was holding at the material time besides their duties in the Commission, the time taken by the Commission to return their views in this case was done with all convenient speed and as often as the prescribed occasion arose. Further, the decision making process involved the task of the Commission's secretariat in preparing the relevant documents to be sent to the panel members, and thereafter, to process the members' views when returned to them. In addition to this, the Commission's secretariat was then handling a great number of disciplinary cases. This involved both ability and adequate manpower. However, allocation of manpower is a question for the Public Service Commission to decide. Without much control over this factor, and since ability of the secretariat is not being questioned, under the stated conditions, this arm of the Commission had proceeded with the decision making process with all convenient speed (see pp 227B, G and 228B–D).

(2) Although the plaintiff was not informed on which of the three charges he was dismissed, there were no provisions in the general orders of the Public Officer (Conduct and Discipline) Regulations 1993 to insist on such disclosure. The judiciary must not impose its own methods on administrative or executive officers, as to do so would be an usurpation (see p 228G–H).

A **[Bahasa Malaysia summary**

Plaintif adalah seorang pegawai polis berpangkat Penolong Penguasa Polis. Dia telah diberikan sepucuk surat tunjuk sebab, yang mengandungi tiga pertuduhan, daripada defendan pertama ('Suruhanjaya'). Plaintif kemudiannya membuat satu representasi bertulis kepada Suruhanjaya tersebut. Plaintif selepas itu telah menerima sepucuk surat yang memberitahunya bahawa dia telah dipecat daripada pasukan polis berkuatkuasa daripada 29 Jun 1996. Tidak berpuas hati dengan pemecatan tersebut, plaintif telah memohon relief-relief di atas dua dasar, iaitu: (i) kelewatan di dalam memutuskan pemecatannya adalah tidak adil; dan (ii) walaupun tiga pertuduhan telah disenaraikan terhadap plaintif, dia tidak diberitahu di atas kesalahan yang mana dia dipecat. Peguam defendan-defendan, di dalam pematahan dasar yang pertama, menegaskan bahawa tidak terdapat kelewatan yang tidak berpatutan di dalam penyampaian keputusan oleh Suruhanjaya. Bagi dasar yang kedua, peguam telah menghujah bahawa Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) (Perintah Am Bab 'D') 1993 tidak mewajibkan pemberitahuan sedemikian.

Diputuskan, menolak permohonan:

(1) Selepas memeriksa tugas-tugas utama yang sedang dipegang oleh setiap seorang ahli-ahli Suruhanjaya pada masa yang material selain daripada tugas mereka di dalam Suruhanjaya, masa yang diambil oleh Suruhanjaya itu untuk megembalikan pandangan-pandangan mereka di dalam kes ini telah dilakukan dengan kecepatan yang sesuai dan sekerap mana situasi yang ditetapkan itu timbul. Selanjutnya, proses membuat keputusan itu melibatkan tugas sekretariat Suruhanjaya dalam menyediakan dokumen-dokumen yang relevan untuk dihantar kepada ahli-ahli panel, dan selepas itu, untuk memproses pandangan ahli-ahli apabila dipulangkan kembali kepada mereka. Sebagai tambahan kepada ini, sekretariat Suruhanjaya pada masa itu sedang menguruskan banyak kes-kes disiplin. Ini melibatkan kedua-dua kebolehan dan tenaga manusia yang mencukupi. Walau bagaimanapun, pengagihan tenaga manusia adalah persoalan bagi Suruhanjaya Perkhidmatan Awam untuk memutuskan. Tanpa kawalan sepenuhnya ke atas faktor ini, dan memandangkan kebolehan sekretariat ini tidak dipersoalkan, di bawah keadaan-keadaan yang telah dinyatakan, lengan kepada Suruhanjaya ini telah menjalankan proses membuat keputusan tersebut dengan kecepatan yang sesuai (lihat ms 227B, G dan 228B–D).

(2) Walaupun plaintif tidak diberitahu atas kesalahan yang mana, di antara tiga kesalahan itu, dia dipecat, tidak terdapat peruntukan-peruntukan di dalam perintah umum Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) (Perintah Am Bab 'D') 1993 yang mendesak pemberitahuan sedemikian. Badan kehakiman hendaklah tidak mengenakan peraturan-peraturannya sendiri ke atas pegawai-pegawai pentadbir atau eksekutif, kerana dengan membuat sedemikian adalah satu perampasan (lihat ms 228G–H).]

Notes

For cases on disciplinary proceedings regarding dismissal of a police officer, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1011–1033.

Cases referred to

Chief Constable of North Wales Police v Evans [1982] 1 WLR 1155 (refd)
Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia [1994] 2 MLJ 114 (refd)
Jagan Nath Biswas v State of West Bengal AIR 1975 SC 1516 (refd)
Local Government Board v Arlidge [1915] AC 120 (refd)
SK Serajah v State of West Bengal AIR 1975 SC 1517 (refd)

Legislation referred to

Interpretation Acts 1948 and 1967 s 54(2)
Public Officer (Conduct and Discipline) (General Orders Chapter 'D') Regulations 1993 O 28

Karpal Singh (*Karpal Singh & Co*) for the plaintiff.
Azizah bte Nawawi (Senior Federal Counsel) for the defendants.

James Foong J:

Introduction and background

The plaintiff was a police officer until he was dismissed on 29 June 1996. He had joined the force on 1 May 1960 and rose from the rank and file to become an Assistant Superintendant of Police (ASP). This rank he held until his dismissal.

On 30 September 1994, a show cause letter by the first defendant was forwarded to him. It contained three charges. Towards this, he made written representation to the first defendant on 17 November 1994. After that, he received no decision from the first defendant until a letter on 9 August 1996, which informed him that he was dismissed from the force with effect from 29 June 1996.

At the time when he received the letter of dismissal, he had passed his mandatory retirement age which fell on 7 July 1996. In view of the decision by the first defendant which was not available then, the plaintiff's services in the force was extended until the decision was made.

Dissatisfied with these set of circumstances which led to his dismissal, the plaintiff now seeks from this court the following:

(1) A declaration that the purported dismissal of the plaintiff vide letter dated 9 August 1996 from the first defendant is null and void, inoperative and of no consequence or effect and that he is still an officer of the Polis Diraja Malaysia.

(2) A declaration that the purported dismissal of the plaintiff with effect from 29 June 1996 is not on the authority of a lawful or valid power.

(3) A declaration that the letter of dismissal dated 9 August 1996 is invalid in that it does not reflect the charge or charges the plaintiff stood dismissed from service and is on that count null and void, inoperative and of no effect or consequence.

(4) An order that an account be taken of all salaries, emoluments and other benefits due to the plaintiff and the same be paid to him forthwith.

(5) Interest on the adjudicated, sum ... .

(6) Costs.

Grounds supporting the application

Mr Karpal Singh, in his consistent practice of economizing judicial time, and of which most of us are appreciative, presented only two grounds to support his client's claim. They are:

(i) the delay of one year and eight months in deciding to dismiss the plaintiff is unfair; it has caused the plaintiff worries, anxiety and mental anguish which he is entitled to claim damages; and

(ii) though three charges are listed against the plaintiff in the show cause letter, the first defendant never informed him on which of the three charges he stood dismissed.

Defence

The defence claims that there was no undue delay in the delivery of the decision by the first defendant. Time was needed to prepare and compile all relevant documents to be submitted to the disciplinary board members for their consideration. Thereafter, the replies and views had to be received from each panel members before they could be processed. Also, at that material time, there was a great number of disciplinary cases to be dealt with.

Principles

From the outset, I am being reminded by the learned plaintiff's counsel that my judicial review must only be confined to 'a review of the manner in which the decision was made' and not 'to consider whether the decision itself was fair and reasonable'; therefore I am to concern 'not with the decision, but the decision making process' — see *Chief Constable of North Wales Police v Evans* [1982] 1 WLR 1155.

Analysis

Delay

Order 28 of the Public Officers (Conduct and Discipline) (General Orders Chapter 'D') Regulations 1993 ('GO') provides:

> If the officer does not furnish any representation within the period specified in subregulation (1), or if the officer furnishes a representation which does not exculpate himself to the satisfaction of the appropriate Disciplinary Authority, the Disciplinary Authority shall then proceed to consider and decide on the dismissal or reduction in rank of the officer.

By the wording of this GO 28, no time is specifically provided for the disciplinary authority, which in this case is the first defendant ('the Commission'), to consider, decide and deliver its decision on disciplinary matters referred to it. To fill this void, I was referred to s 54(2) of the Interpretation Acts 1948 and 1967. It provides as follows:

> Where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion arises.

But what is considered 'convenient speed and as often as the prescribed occasion arises'? Mr Karpal Singh in assisting the court cited a number of cases which have reference to this term or associated with it. Those involving compulsory acquisition of land, I find them inapplicable. There, the circumstances are different. Decision in land acquisition case must be made soon after representation for reason that land prices fluctuates between time of hearing and award. This is an important consideration. In our case, the only detrimental factor to the plaintiff is the claim of emotional distress during the period of wait. For this, I find that the propositions expounded in detention cases are more appropriate and offer some guidance. Below are three such propositions which I find relevant.

The first is by Krishna Iyer J in *Jagan Nath Biswas v State of West Bengal* AIR 1975 SC 1516, where he expressed that:

> One should have expected some proximity in time to provide a rational nexus between the incident relied on and the satisfaction arrived at. This court has repeatedly pointed out that unexplained and long delay will be fatal to the plea of subjective satisfaction.

Then in *SK Serajah v State of West Bengal* AIR 1975 SC 1517, Bhagwati J said:

> Each case must depend on its own peculiar facts and circumstances.

Again in *Gora v State of West Bengal,* Bhagwati J explained:

> The test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the 'offending acts' and the order of detention.

Bearing these in mind, I shall proceed to analyse it with the facts of this case.

By the nature of the explanation tendered by the first defendant, the time taken in the decision making process of this case under this GO 28 involved two elements. The first is the constitution of the members of the Commission. The second is the administrative machinery of the Commission in handling the disciplinary matter.

On the first, DW1 stressed that there were nine members of the Commission. It was headed by the right honourable Prime Minister of

Malaysia, in his capacity as Minister of Home Affairs. Then it had the Inspector-General of Police, as well as the President of the Court of Appeal. The other Commission members, though not named, must also be notable personalities. DW1 proceeded to explain the procedure undertaken. Initially, the relevant documents involved in this case were forwarded to the panel members of the Commission. Each member must study them and return with their views. There was some time taken here, as elaborated by DW1. Now, is this time taken considered done with all convenient speed and as often as the prescribed occasion arise? In order to answer this, one must examine the principal jobs these Commission members were holding at the material time besides their duties in the Commission.

To begin with, the right honourable Prime Minister is a Commission member by virtue of his position as Minister of Home Affairs, in which the force is under his charge. But by the nature of his job, he is also the supreme executive of the country. Great demand must be made on his time to attend to the many affairs of state. Though the consideration of the plaintiff's case was certainly one of his duties, but a generous allowance of time must be accorded to him to perform this task in view of his other duties; some of which must obviously take priority over the plaintiff's case.

Then comes the President of the Court of Appeal. In this area, I can speak confidently, with judicial notice, that his Lordship has to preside over the vast number of cases that come before his court. This being his principal job, it must be attended to first before an allocation of his time to consider the plaintiff's case.

The Inspector-General of Police is next. I need not express in detail his principal job specification but, certainly there were other urgent demands than solely to evaluate the plaintiff's case.

As for others, obviously they too held principal jobs other than carrying out their duties as Commission members. The demand on their time is probably just as pressing as those personalities listed above.

Under these circumstances, I am of the opinion that the time taken by the Commission members to return their views in this case was done with all convenient speed and as often as the prescribed occasion arise.

Mr Karpal Singh however feels that this cannot justify against the interest of the plaintiff. He expressed that the Commission should meet more often, or one may probably add/replace them with members who can spend time. But this is not really a remedy. Firstly, more frequent meetings means more time is required to attend to such meetings. And is it not the complaint of time constraint the essence of the excuse of the Commission members in the time taken for the delivery of the decision in this case? Secondly, the appointment of panel members is laid down by laws and regulations. It is not so simple to change them to alternative personalities. Even if change is permitted, who shall they be replaced with? Is it not the accepted principle that 'a man must be judged only by his peers', and if so, who is no better for an officer of the force to be judged by those persons disclosed earlier. Surely no one can deny that members of the Commission, by the position they hold, are not of the highest calibre and integrity to judge an officer, like the plaintiff, in a disciplinary matter. Replacing them with

lesser mortals may attract cries of injustice. But, accepting them comes with the encumbrance of time constraint, as exposed above. A

The second component to this decision making process involved the task of the Commission's secretariat in preparing the relevant documents to be sent to the panel members, and thereafter, to process the members' views when returned to them. All these, as explained by DW1, takes time. In addition to this, the Commission's secretariat was then handling a great number of disciplinary cases. With these disclosures, can the administrative arm of the Commission be faulted in not proceeding to make the decision with all convenient speed? B

To my mind, this area is much associated with the operation of an efficient secretariat. But this involves both ability and adequate manpower. From the narratives of DW1, manpower seems to be the only problem in this case; not the former. But allocation of manpower is a question for the Public Service Commission to decide. Without much control over this factor, and since ability of the secretariat is not being questioned, I find that under the stated conditions, this arm of the Commission had proceeded with the decision making process with all convenient speed and as often as the occasion arise. C D

Dismissal on which charge?

From the evidence of DW1, the plaintiff was dismissed based on the second and third charge listed in the show cause letter. It is also revealed that the representation of the plaintiff made against the first charge was accepted by the Commission. But all these were not told to the plaintiff in his letter of dismissal. Mr Karpal Singh, of course, seized upon this to claim injustice and unfairness in the decision making process of the Commission. E F

The learned federal counsel, however, rebutted this by declaring that no where in the GO requires such disclosures; after all, the plaintiff is still dismissed on two of the three charges.

I agree with the federal counsel on this score. As explicitly warned by the Chief Justice of Borneo in *Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia* [1994] 2 MLJ 114 at p 130: 'that we are dealing with general orders that have legislative effect and we must guard ourselves against adding words into them which were never intended.' With no provision to insist on such disclosure, the judiciary must not impose its own methods on administrative or executive officers to do so, otherwise, it is an usurpation — see Lord Shaw in *Local Government Board v Arlidge* [1915] AC 120. With this, I find the plaintiff's second challenge unsustainable. G H

Conclusion

Accordingly, I hereby dismiss the plaintiff's claim with costs. I

Application dismissed.

Reported by Mohd Rizal Abidin